

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARK ALAN ANDRESS,)	
)	
Petitioner,)	
)	
v.)	Case No. 1:18-CV-352
)	
)	
M.D. OVERMYER, <u>et al.</u>,)	
Respondents.)	

MEMORANDUM ORDER

This habeas action was received by the Clerk of Court on November 5, 2018, and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

In his petition for a writ of habeas corpus [ECF No. 1], which he filed pursuant to 28 U.S.C. § 2254, Petitioner challenged the judgment of sentence imposed upon him on April 29, 2016, by the Court of Common Pleas of McKean County at criminal docket number CP-42-CR-403-2015. Petitioner is currently exhausting his available state-court remedies and Respondents filed motions to dismiss [ECF Nos. 5, 18] this habeas action. In his initial reply [ECF No. 14], Petitioner asserted that he did not file a PCRA petition, but in a subsequent filing, [ECF No. 17], he acknowledged that he does have a PCRA proceeding pending in state court.

On March 5, 2019, Magistrate Judge Lanzillo issued a Report and Recommendation [ECF No. 20] recommending that the Court grant Respondents' motions and dismiss Petitioner's federal habeas claims without prejudice. Petitioner did not file objections.

After *de novo* review of all of the pleadings in this action, together with the report and recommendation, the following order is entered:

AND NOW, this 27th day of March, 2019;

IT IS ORDERED that Respondents' motions to dismiss [ECF No. 5, 18] are GRANTED, and the Petitioner's claims are dismissed without prejudice. To the extent a certificate of appealability determination is required, Petitioner is not entitled to one.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on March 5, 2019 [ECF No. 20] is adopted as the opinion of the court.

IT IS FURTHER ORDERED the Clerk of Court shall mark this case CLOSED.

/s/ Susan Paradise Baxter

SUSAN PARADISE BAXTER
United States District Judge